IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. Civil Writ Petition No.3464/07
Sohan Lal Luhadia & Ors.
Vs.
Rent Appellate Tribunal, Ajmer & Ors.

3.10.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri Bihari Lal Agarwal for petitioners.
Shri Ajeet Bhandari with
Shri Kinshuk Jain for respondents.

The petitioner has challenged the judgment passed by the Rent Tribunal dated 17.10.05 and the Appellate Rent Tribunal dated 12.2.2007 whereby he has been ordered to be evicted from the residential premises on the petition filed at the instance of the respondent landlord.

The learned counsel for the petitioner argued that even though the

respondent-landlord produced as many as 3 witnesses but none of them were allowed to be cross examined by the learned Rent Tribunal in spite of specific application made to that effect by the petitioner. The Appellate Rent Tribunal also concurred with the view taken by the Rent Tribunal while relying on the division bench judgment of this Court in Mahamud Khan Vs. State of Raj. & Ors.-2006 (1) DNJ (Raj.) 122 to say that cross examination of a witness cannot be claimed as a matter of fact.

The learned counsel for the petitioner has cited recent division bench judgment of this Court in Ramswaroop Vs. Charanjeet Singh & Ors., D.B. Civil Special Appeal (Writ) No.72/2007 decided on 8.8.2007 wherein

the division bench has distinguished the judgment of Mahmud Khan, supra while reiterating the judgment in the case of Aasandas Vs. State of Raj. & Ors.-RLW 2005 (2) Raj. 1281. The division bench in para 13 of the judgment observed as under:-

> “13. It is true that the Rent Tribunal or for that matter Appellate Rent Tribunal are not bound by the procedure laid down by the Code of Civil Procedure, 1908. This is specifically provided in Section 21 (3). However the procedure followed by the Rent Tribunal in every case before it has to be in conformity with the principle of natural justice. Though sub-section (1) of Section 21 provides that the evidence of a witness before the Tribunal (original as well as appellate) shall be given by affidavit but it makes it clear that if in the opinion of the Tribunal and in the interest of justice, the witness needs to be called for examination or cross-

examination and that such witness may be produced before it, the Tribunal may order such witness to be produced before it for examination or cross-examination. The expression, “may order attendance for examination or cross-examination of such a witness” though reflects that it is not imperative for the Tribunal to order attendance for cross-examination of a witness in each and every case but looking to the power being exercised by the Rent Tribunal and the nature of the order that may be passed by it including the order of eviction, ordinarily, unless strong reasons are shown by the other side otherwise, the permission for cross examination must follow as it advances the cause of justice. It cannot be overlooked that the Rent Tribunal constituted under the Act of 2001 is a substitute of Civil Court for deciding the dispute/s between the landlord and the tenant for eviction, rent and other incidental matters. Though the procedure is summary and the Tribunal is not bound by the procedure prescribed in the Code of Civil

Procedure, it needs no emphasis that such procedure must be guided by the principles of natural justice. Actually this is provided in Section 21 itself. How does the Tribunal get convinced about the veracity of the affidavit filed by a party in support of his case unless such witness is allowed to be cross-examined by the other side. After all, the Tribunal is supposed to record a finding of fact after due appreciation of the evidence having come before it. The deposition of a witness by way of affidavit without cross-examination, ordinarily, may not enable the Tribunal to properly and adequately decide about truthfulness of the deposition. The discretion given to the Rent Tribunal or for that matter to the Appellate Rent Tribunal in calling a witness for examination or cross-examination under Section 21 (1) of the Act of 2001 is a judicial discretion and has to be founded on reason. After all, cross-examination is a valuable right, in the context of principles of natural justice, given to a party against whom a particular evidence is

> set up and if prayed for, must not be denied ordinarily unless such prayer is found to have been made to unnecessarily delay the proceedings or is seen to be actuated with motive."

The learned counsel for the respondent opposed the writ petition and argued that writ petition has been correctly decided inasmuch as in the application filed by the petitioner for permission to cross examine the witness, no reason whatsoever was indicated as to why cross examination was necessary.

Having heard the learned counsel for the parties and perused the material on record, I find that the judgment on the basis of which the learned Rent Tribunal as well as Appellate Rent Tribunal declined the permission to cross examine the witness having now been

explained away by judgment in the case of Ram Swaroop, supra, where the division bench has made elaborate discussions of the law and held that unless strong reasons are given by the other side, the permission for cross examination must follow as it advances the cause of justice or unless where the prayer is found to have been made to unnecessarily delay the proceedings or is seen to be actuated with some motive, the permission should invariably be granted.

In the light of the aforesaid discussion, the writ petition deserves to be allowed and is accordingly allowed. The impugned orders dated 17.10.2005 and 12.2.2007 are set aside and the matter is remanded back to the Rent Tribunal for deciding it afresh after giving

opportunity of cross examination to the petitioner though on the basis of material already available on record within three months from the date of appearance of the parties before it. The respondents shall also be permitted to cross examine the witnesses of the petitioner herein.

(Mohammad Rafiq),J.

Rs/-